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Supreme Court, U.S.

FILED  
No \_\_\_\_\_

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IN THE

UNITED STATES SUPREME COURT

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In re JOHN K. WHITEFORD and JOSEPH B. WHITEFORD  
Petitioners

v.

Penn Hills Municipality; Howard Davidson, as an individual;  
Leonard J. Hromyak, as an individual; Robert Gallo, as an  
individual; Michael Lettrich, Esq., as an individual; Meyer,  
Darragh, Buckler, Bebenek & Eck P.L.L.C., as a law firm;  
and Dante Pelligrini, as an individual.

Respondents

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PETITION FOR A WRIT OF PROHIBITION  
TO THIRD CIRCUIT APPEAL 07-3284 AND TO PA  
SUPREME COURT PETITION FOR ALLOWANCE OF  
APPEAL 91-WAL-2009

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Filed by; John K. & Joseph B. Whiteford  
Petitioners Pro se  
1188 Hamil Road  
Verona, Pa. 15147  
412-798-5606

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QUESTIONS PRESENTED

1. Do repeated criminal prosecutions of the same offense violate the U.S. Constitution's Double Jeopardy prohibition? Yes.
2. Do criminal prosecutions of an offense civil when committed violate the U.S. Constitution's Ex Post Facto prohibition? Yes.
3. Is the U.S. Constitution's Due Process guarantee violated:
  - A. by twenty six (26) criminal convictions:
    - (a) of the same offense;
    - (b) Of an offense civil when committed;
    - (c) Based solely on the first erred conviction sans evidence;
    - (d) When the complaint affiant does not testify or present evidence;
    - (e) When the accused is permitted no defense;
    - (f) When exonerating defense evidence is suppressed by the trial judge;
    - (g) When the trial judge improperly denies the accused' jury rial request;
    - (h) When the Court refuses to address the affirmative constitutional defense;
    - (i) When civil fines are the only law enforcement penalty;
    - (j) Where the Court sanctions the convicted for appeals as of right;
    - (k) With threats of imprisonment for failure to pay a civil fine;
  - B. By civil proceedings in violation of Federal Bankruptcy Rules imposing fines exceeding limits allowed by the Ordinance violation penalties?

## LIST OF THE PARTIES

All parties appear in the caption of the case.

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## PETITION FOR A WRIT OF PROHIBITION

Petitioners, natural born citizen of the United States, respectfully request the United States Supreme Court grant this Writ of Prohibition for the compelling reasons presented below.

### JURISDICTION

The United States Supreme Court has jurisdiction for this Writ of Prohibition under 28 U.S.C. 1651(a) and the U.S. Constitution Article III, Section 2. Petition shows relief has been denied in every lower state or federal court. Petitioner is injured and every citizen of Pennsylvania threatened by the civil rights violations in question. The U.S. supreme Court has discretionary jurisdiction now

### U.S. CONSTITUTIONAL ISSUES INVOLVED

#### Issue

#### Cite Page

In first a civil, then 26 criminal convictions of mud from a gas well site polluting a Pa. stream while simultaneous Pa. Dept. of Environmental Protection well site inspections and testimony prove the accusation is false, Respondents violated:

1. The Double Jeopardy clause; 9
  2. The Ex Post Facto clause; 9
  3. The Due Process clause violations 9
- listed on Page i.

STATEMENT OF THE CASE

Under authority provided in the penal 1984 Pa. Oil and Gas Act ("Act 223") 58 P.S. Section 601.201, the Pa. Department of Environmental Protection ("DEP") approved a site plan in compliance with the 545-page DEP Oil and Gas Well Operators Manual ("DEP Well Manual") and issued a new gas well permit to Joseph B. Whiteford. Act 223, Section 602 "supersedes" and "preempts" local ordinances which conflict with or "accomplish the same purposes" as Act.223. The subject well was installed in Respondent Penn Hills Municipality, a political subdivision of the Commonwealth of Pennsylvania.

Act 223 is a penal statute more harsh than Penn Hills Ordinance 2136 or 1939. Act 223 made it a crime not to construct a well site in compliance with DEP regulations, so this well site was built to DEP specifications, not Penn Hills.

Under the gratuitous supervision of John K. Whiteford, site work began December 18, 2003, drilling was completed March 6, 2004 and the site restoration required of all wells by Act 223, Section 206 to ensure every well site is in permanent compliance with the Pa. Clean Streams Law and the federal Clean Water Act was completed May 3, 2004. No grading or excavating has been performed on this well site since May 3, 2004.

Under triple authorities provided in: (1) The federal Clean Water Act (EPA rulemaking at 71 FR 894); (2) The Pa. Cleans streams Law (36 Pa. Bulletin 7071) and; (3) Act 223 Section 206, DEP performed the first well site earth disturbance inspection on the well 03-18-2004 and notified John K. Whiteford by certified mail one erosion barrier required by the Pa. Clean Streams Law was absent. In curative response to avoid DEP enforcement penalties provided in Act 223, Section 505, Joseph B.



Whiteford paid Miller Excavating \$5,852.50 to complete restoration of the entire well site between April 22, 2004 and May 3, 2004. Restoration, as defined and required of all Pennsylvania well sites by Act 223, Section 206 and 25 Pa. Environmental Resources Code, Chapter 78, drains and reclaims the 180,000 gallon drilling pits, restores site contours as nearly as possible to pre-drilling configuration, replaces the mandatory saved topsoil, plants and covers the Act 223 prescribed grass seed mixture to ensure permanent and complete well site compliance with the Pa. Clean Streams Law.

Respondent, Penn Hills Planning Director Howard Davidson ("Davidson"), personally photographed the subject well site April 19, 2004 (before restoration) and May 4, 2004 (the day after restoration), and again 07-20-2004 and 11-12-2004. Davidson's photographs show he has known since May 4, 2004 the well site does not have any of the physical violations he accuses in his civil court complaint, NT-674-2004, filed July 12, 004 against John K. Whiteford or in 26 verbatim same criminal violations Davidson subsequently filed against either John K. Whiteford or Joseph B. Whiteford ("Whitefords") from July 28, 2004 to February 25, 2007. Davidson's verbatim same four ordinance violations accused in one civil and 26 criminal complaints against the Whitefords are;

- (1) Not obtaining a municipal grading permit for site work required by DEP and published in the DEP Well Manual,, Chapter 4, Section II SITE PLANNING AND EROSION AND SEDIMENTATION CONTROL" p. 9 A(f) & (g[2]: "less than 10% grades where possible");
- (2) Well site miracle mud polluting a stream on adjacent property (Never seen by DEP);
- (3) Excessive excavation and excessive (access)

road width and (Not seen by DEP);

- (4) Failure to comply with grading and excavating standards (Standards promulgated and published only by DEP for Pennsylvania well sites in the 545-page DEP Well Manual and not seen by DEP this site).

Davidson's first complaint, NT-674-2004, accused John Whiteford the four above violate Ordinance 2136, allowing only *civil* enforcement and a \$500 maximum fine for first offense. Davidson's next 26 criminal complaints claim the verbatim same four accusations also violate Ordinance 1939, also an ordinance allowing only *civil* enforcement until 01-22-2007 when Penn Hills amended 1939 to add 30 days imprisonment for each violation.

Davidson filed the first four identical *criminal* complaints of Ordinance 1939 violation against Joseph B. Whiteford: (#1) NT-1088-2004 on July 28, 2004; (#2) NT-1089-2004 on July 29, 2004; (#3) NT-208-2005 on 12-2-2004 and; (#4) NT-29-2006 on 01-04-2006 while Ordinance 1939 still allowed only *civil* enforcement.

Under triple authorities provided in: (1) The federal Clean Water Act (EPA rulemaking at 71 FR 894); (2) The Pa. Cleans streams Law (36 Pa. Bulletin 7071) and; (3) Act 223 Section 206, DEP performed subject well site earth disturbance inspections on: (#1) 03-18-2004; (#2) 07-26-004; (#3) 08-04-2004, (#4) 10-22-2004 and; (#5) 02-09-2007, five inspections which contradict, disclaim and discredit Davidson's physical accusations of:

- (2) Well site mud polluting a stream;
- (3) Excessive excavation and excessive (access) road width and;
- (4) Failure to comply with grading and excavating standards.

Penn Hills Magistrate Leonard Hromyak convicted of

all accusations in one civil and 26 criminal Davidson complaints from 09-02-2004 to 11-2-2007, each time threatening arrest for failure to pay any of 26 criminal fines imposed. Common Pleas Judge Robert Gallo (Gallo") found John liable of all accusations in the first and only civil complaint, AR-6207-2004 and Joseph guilty in the first two criminal complaints heard simultaneously in appeal 2066-CL-2004. Both Hromyak and Gallo believed Respondent David Lettrich Esq. ("Lettrich") perjury that municipalities regulate the well site and DEP the borehole.

Joseph's first two criminal convictions of the same offense finished the appeal process first on 09-23-2005 when Judge Dante Pelligrini ("Pelligrini") of the Commonwealth Court affirmed two convictions of the same offenses at 884 A.2d 364. The Pa. Supreme Court denied Joseph's Petition for Allowance of Appeal 640-WAL-2005.

Gallo affirmed Joseph's third Hromyak conviction for the same offenses in NT-208-2005 saying in the transcribed 2396-CL-2005 appeal he could not "deviate" from the Pelligrini Opinion. Commonwealth Court Judge James Gardner Colins ("Colins") affirmed the conviction at 918 A.2d 849, sanctioning Joseph for a "frivolous" appeal.

Hromyak convicted Joseph for the fourth time of the same offenses in NT-28-2006, again threatening arrest for failure to pay. Joseph did not appeal.

After Penn Hills amended Ordinance 1939 on 01-22-2007 to make it penal, Davidson quickly filed 22 more criminal complaints for different February 2007 dates, 11 each against John and Joseph Whiteford, accusing the verbatim same four well site violations of Ordinance 1939 prosecuted in 2004, 2005 and 2006.

On June 9, 2007, Pa. Commonwealth Court ruled in Great Lakes Energy (since renamed Range Resources) et al v.

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Salem Township ("Salem"), 1866-CD-2006 , Act 223 preempts a municipal ordinance requiring municipal well site plan approval and a municipal "Earth Disturbance Permit" (grading permit)". Relying solely on Act 223, Section 602 amendments of 1992, Commonwealth Court ruled the *entire* 21-page ordinance conflicted or duplicated DEP regulation of wells provided in Act 223. The Pa. Supreme Court affirmed the Commonwealth Court Salem decision 02-19-2009. Act 223 has not been amended since 1992, but Pa. Courts do change their mind, except when prosecuting Whitefords.

After Pa. Supreme Court denied Whitefords' Writs of Prohibition 3 & 4-WM-2008 in combined cases 2927 & 2928 CL-2007, on 02-15-2008, Judge Michael McCarthy of the Common Pleas Court convicted Whitefords of 21 verbatim same four violations of Ordinance 1939 prosecuted in 2004, 2005 & 2006, including 21 more convictions of failure to obtain a municipal grading permit preempted by the Salem Commonwealth Court decision seven months earlier.

In joined appeals 489 & 490-CD-2009, Pa. Commonwealth Court affirmed 21 more Whiteford convictions for failure to obtain a Penn Hills municipal grading permit for a gas well on 02-20-2009. Whitefords filed Petition for Allowance of Appeal 91-WAL-2009, in the Pa. Supreme Court which has five times denied review.

Whitefords filed civil rights complaint, 07-272, in the Western District Court for Pa., under 42 U.S.C. 1983 to end Respondents repeated violations of Due Process and the Double Jeopardy and Ex Post Facto prohibitions of the U.S. Constitution. District court dismissed 07-272 without address to the constitutional questions. In Whitefords

' Third Circuit appeal of that dismissal, appeal 07-3284, a Motion for Temporary Restraining Order to stop Penn Hills 22 repeated 2007 prosecutions was denied 01-16-2008 and Reconsideration of that Denial was denied on 05-13-2008.

Whitefords file this Writ of Prohibition in the U.S. Supreme Court, still awaiting address to their affirmative constitutional defense, address that has been denied in every lower federal and state court since 2004. Davidson promised John Whiteford the prosecutions would continue in a transcribed meeting before the Penn Hills Uniform Construction Board on 05-05-2005 and kept that promise.

## REASONS FOR GRANTING THE WRIT

Every Penn Hills Complaint, Court Judgment, Court Opinion, Transcript of Court proceedings, DEP inspection report, Restoration Invoice or other document in this Writ of Prohibition is exhibited in Third Circuit Court of Appeals case 07-3284 which is referenced as though fully set out here.

The U.S. Supreme Court should not confuse criminal conviction in a Pennsylvania court with actual wrongdoing. Pa. Commonwealth Court adopted Respondent Lettrich's fairy tale that DEP does not regulate and approve well site plans and enforce the Pa. Clean streams Law on Pennsylvania well sites under authority provided in Act 223, although that authority is plainly provided in Act 223, Section 206, the Pa Clean Streams Law and the federal Clean Water Act.

Joseph Whiteford's first two criminal convictions of "all" Davidson's four accusations finished the Pa. appeals process first when Commonwealth Court Judge Dante Pelligrini opined on 09-23-2005 at 884 A.2d 364 that: (1) DEP does not require, approve and regulate well site plans under authority provided in Act 223; (2) DEP does not regulate, inspect for and enforce well site compliance with Act 223, the Pa. Cleans Streams Law and he federal Clean Water Act (Four DEP well site earth disturbance inspections refuting Davidson's accusations were entered in the appeal, two by the prosecution.); (3) Substituting criminal for civil proceedings was a "harmless error"..."advantaging" the accused (Every criminal fine was accompanied by the Magistrate's threat to arrest and revoke driver's license for failure to pay the fine for criminal convictions where DEP inspections prove beyond a reasonable doubt the accusations are not true.. These Pa. proceeding trashed the Pa. Rules of Criminal Procedure, Due



Process and Double Jeopardy & Ex Post Facto law);

(4) that the Ordinance 1939 phrase "every day is a separate offense" allows repeated prosecution of the same offense every time the date changes (Double Jeopardy allows *no* repeat prosecution of the same offense. This prosecution of the same offense twice violates Double Jeopardy, the Pa. Rules of Criminal Procedure and Due Process.). Joseph's affirmative constitutional defense that prosecuting the same offense twice, even simultaneously, was denied by the Pelligrini Opinion affirming two convictions and two criminal fines for the same offense). The Pelligrini Opinion did concede the appeal, 995-CD-2005, was a civil proceeding and civil fine, setting the precedent for Penn Hills to violate the Ex Post Facto clause with Davidson next criminal complaint against Joseph B. Whiteford. Pa. Supreme Court denied Petition for Allowance of Appeal 640-WAL-2005 with a single word "DENIED".

There is no evidence that could overcome five DEP well site inspections proving the physical well site violations Davidson accuses in 27 court complaints are false. Knowingly false is perjury. Davidson photographed the well site before and the day after restoration was completed, May 4, 2004, and has known since that day his physical well site accusations are false in 27 subsequent court complaints. The nearest stream would require a mud stripe more than 1000 feet long from the well site, a mud stripe undetected on five DEP well site inspections confirming Clean Streams Law compliance at this well site from 03-18-2004 to 02-09-2007. In very particular, the DEP inspection of 10-22-2004 noted "none (mud) leaving the site". DEP inspection on 02-09-2007 (One of 22 Feb. 2007 dates Davidson accuses mud polluting a stream) found no violations on the "snow covered" site. A 1000+ foot mud stripe is easily seen against white snow, but mud can not

form in the constantly sub-freezing temperatures at this site every day, all day, in February 2007. There was no day in February 2007 on which Davidson's miracle mud could form. Davidson testified (transcribed cross examination in 2927 & 2928-CL-2007 on 01-22-2008) he did not inspect the well site in 2007.

In John K. Whiteford's absence, his civil liability in NT-674-2004 appeal was increased to \$10,000 on 04-26-2006 by Common Pleas Judge Robert Gallo ("Gallo") despite: (1) Ordinance 2136 allowing only a \$500 fine for the first offense and; (2) Violating the federal Bankruptcy Rules by continuing civil suit, AR-6207-2004, after AR-6207-2004 had been named a creditor in John K. Whiteford's Chapter 7 Bankruptcy 05-36707-BM, filed 10-13-2005 in the Western District Court for Pennsylvania and discharged 04-20-2006.

On 03-08-2005, Davidson filed criminal complaint NT-208-2005 accusing the verbatim same four Ordinance 1939 violations against Joseph B. Whiteford, a criminal complaint in violation of the Double Jeopardy and Ex Post Facto prohibitions, Due Process and Ordinance 1939 which still allowed only *civil* enforcement. Penn Hills Magistrate Leonard Hromyak ("Hromyak") convicted of all and threatened again arrest and revocation of driver's license for failure to pay, both threaten constitutionally protected liberty and property rights of Joseph B. Whiteford. Gallo affirmed conviction again in appeal 2396-CL-2005 based, the judge said, on the Pelligrini Opinion. In this transcribed criminal proceeding 2396-CL-2005: (1) Affiant Davidson did not speak, present evidence or any proof of guilt; (2) The exhibited DEP well site inspection of 10-22-2004 finding none of Davidson's accused violations was adjudged "irrelevant" by Gallo; (3) John K. Whiteford's 09-01-2004 video of the restored



well site was prohibited with a shake of the Judicial head (not transcribable); (4) Penn Hills attorney David Lettrich conceived the new notion that the Pelligrini Opinion dictated conviction every time a Whiteford is accused of the same four Ordinance 1939 violations and; (6) Proof of guilt is unnecessary. A remarkable process, but not Due Process.

The Commonwealth Court Judge James Gardner Colins ("Colins") affirmed, again, four criminal convictions of violating an ordinance that permitted only *civil* enforcement. At 918 A.2d 849. Colins opined: (1) The Pelligrini Opinion (884 A.2d 364) is the law of the case: (2) In undeniable effect, the Peligrinii Opinion requires conviction every time a Whiteford is accused of these four ordinance violations, the law of the case ; (3) Prosecution proof of guilt was unnecessary; (4) DEP proof of innocence is irrelevant; (5) Appeal as of right of the convictions is "frivolous" and the "epitome of obdurate conduct" (6) Colins sanctioned Joseph Whiteford with Penn Hills' attorney fees for a frivolous appeal. Remarkable process but not the guaranteed Process Due every United States citizen.

On 12-02-2005, Davidson filed criminal complaint NT-28-2006 accusing Joseph B. Whiteford of the verbatim same four violations of Ordinance 1939, again by this complaint violating the civil-enforcement-only Ordinance 1939 and the Double Jeopardy, Ex Post Facto and Due Process clauses. Penn Hills Magistrate convicted and threatened arrest and driver's license revocation for failure to pay, both constitutionally protected liberty and property interests. Joseph paid, for the fourth time. No appeal.

Penn Hills amended Ordinance 1939 on 01-22-2007 to add 30 days imprisonment for each violation. Davidson

quickly filed 11 criminal complaints each accusing the verbatim same 2004, 005 and 2006 prosecuted violations of the newly amended Ordinance 1939 against John K Whiteford and 11 verbatim same criminal complaints against Joseph B. Whiteford for different dates in February 2007. Petitioners filed civil rights complaint 07-272 in the District Court for Western Pennsylvania to end Davidson's perjury and unbridled abuse of political power. Hromyak arecused, but Magistrate Jeffrey Herbst ("Herbst") convicted of all Davidson's accusation 11-01-2007 in a transcribed hearing(?) allowing no defense or cross examination of the accuser and requiring no proof of guilt from the affiant, with whom Herbst met for 10 minutes ex parte before Whitefords were allowed into the courtroom. No Process is an inquisition. Herbst said he based his convictions on the Commonwealth Colins Order at 918 A.2d.849, since he did not allow either prosecution or defense evidence to be presented. Goodbye the right to fair and impartial courts.

On 01-22-2008, in Common Pleas appeal 2927 & 2928-CL-2007 Whitefords each faced a maximum of 1320 days imprisonment and \$44, 000 in fines if convicted of 11 Davidson criminal complaints, each containing four Ordinance 1939 violations. Davidson asked for "jail" at the transcribed Magistrate's hearing on 11-12-2007. Whitefords' request for a jury trial in 2927 & 2928-CL-2007 made in pretrial chambers before transcription began, was improperly denied. This is not a case of repeated violations, but the same violations prosecuted repeatedly, in violation of the U.S. Supreme Court's Rutledge" precedent and retroactively, in violation of the U.S. Supreme Court's Collins" precedent.

Whitefords attempted to enter the 21-page, entirely

preempted, Salem ordinance into evidence in the Common Pleas appeal 2927 & 2928-CL-007 combined hearing but the trial judge refused because Whitefords do not have a law degree. Without a copy of the Salem ordinance, the trial judge, Judge Michael McCarthy ("McCarthy") can not know all that was preempted in the Salem decision. McCarthy three times refused to allow videos John K. Whiteford took of the well site 09-01-2004 and 02-18-2007 entered into evidence. The videos: (1) convince any seeing person the well site has no Clean Stream Law violations from the first Davidson accusation to the last; (2) Are visual evidence of the well site in 2007 and prove beyond reasonable doubt Davidson's accusations are knowingly false (as do his own 2004 well site photos). Testimony and inspection reports from DEP officials who actually did inspect the well site five times disproving all 27 Davidson accusations from the first did not raise reasonable doubt in the mind of McCarthy, any prior Court or Respondent. Whitefords convictions were affirmed in appeal 2927 & 2928-CL-2007. Sham process, not remotely Due Process.

On January 20, 2008, Commonwealth Court in joined appeals 489 & 490-CD-2008 anonymously affirmed (Unsigned Opinions) John K and Joseph B. Whiteford's 21 convictions of the verbatim same criminal offenses prosecuted as civil offenses in 2004 and *sanctioned* Whitefords for a frivolous appeal. Yes, twenty one (21) more convictions of failure to obtain a municipal gas well grading permit by the same Commonwealth Court that preempted municipal well grading permits *seven months earlier*, June 9, 2007, in the Salem decision, a ruling based solely on the 1992 amendments to Act 223, Section 602. The Commonwealth Court Salem decision preempting municipal site plan approvals, grading permits and the entire 21-page Salem ordinance purporting to

regulate wells was affirmed by the Pa. Supreme Court on 02-19-2009.

District Court dismissed Whitefords' civil rights suit, 07-272, without address to the constitutional Double Jeopardy, Ex Post Facto and Due Process questions, claiming all Respondents are immune from 42 U.S.C. 1983 suit (Not true.). Petitioner's appeal of that dismissal, 07-3284, is pending in the Third Circuit Court of Appeals which denied Petitioner's Motion to Restrain unconstitutional state proceedings in 2927 & 2928-CL-2007 on 01-16-2008 and denied Reconsideration of that Temporary Restraining Order on 05-13-2008.

And, the Pennsylvania Supreme Court denied Writs of Prohibition: (1) 3-WAL-2007; (2) 4-WAL-2007; (3) 11-WM-2006; 4) 15-WM-02006 and; (5) Petition for Allowance of Appeal 640-WAL-2005, each asserting the affirmative constitutional defense presented here. The Pa. Supreme Court's address consisted of using only the English word "DENIED" five times.

Whitefords have been fined 27 separate times for failure to obtain a municipal grading permit for a DEP permitted gas well. Since the actual court fines for this single violation range from \$500 to any multiple of \$500, Whitefords were entitled by U.S. Const. Amendment VI to a jury trial when *potential* fines exceed \$5000 ( Title 18 U.S.C. Part 2, Chap.227, Sub. C / 3571 . Pennsylvania's judicial application of "every day is a separate offense" entitled Whitefords' to a jury trial in 2927 & 2928-CL-2007 where each faced potential fines of \$11,000 for this single offense simultaneously prosecuted 11 times for each Whiteford. The Judge refused Whitefords' jury trial request, mis-informing them only imprisonment guarantees jury trial. Pennsylvania must grant a jury trial

for any single offense where the fine can be multiplied to exceed \$5000. Nevertheless, a single criminal offense can be prosecuted only a single time (Double Jeopardy) and municipal grading permits for DEP permitted wells have been preempted in Pennsylvania since 1992, ruled the Pa. Supreme Court February 19 2009 (Salem decision).

Every lower Pennsylvania Court ignored Petitioners' affirmative constitutional defense in all Opinions. No Pa Court offered an Opinion consistent with the very consistent U.S. Supreme Court decisions in Rutledge", "Collins", or "Bell". Due Process must be "meaningful" and "appropriate to the nature of the case" (Bell V. Burson, 402 U.S. 535).

Pennsylvania Courts, so committed to convicting the accused 27 times of the same offenses, neglected to protect Whitefords' civil rights.

## SUMMARY OF THE ARGUMENT

Every Respondent quotes each prior Penn Hills v. Whiteford civil or criminal case, proving knowledge of all. Every Respondent certifies those cases prosecute the *identical* four offenses to invoke their unique mis-interpretation of the judicial doctrine of collateral estoppel being sufficient to replace proof beyond a reasonable doubt for criminal conviction in Pennsylvania.

Respondents' Rutledge Double Jeopardy burden was to show a different factual element for each accusation previously prosecuted, requiring 108 different facts(4 offenses x 27 prosecutions) and proof of those different facts beyond a reasonable doubt for 26 criminal proceedings. Respondents made no attempt to show any



differences or prove them. Instead, Respondents invariably claim the offenses are 27 times identical except for the dates filed, and no proof of guilt for any conviction after the first was necessary. Every Pennsylvania court and federal court so far agrees. Respondents claim filing the identical accusations on different dates escapes the Double Jeopardy prohibition on just that. It is U.S. supreme Court time.

. Pennsylvania courts' Opinions that the Ordinance 1939 phrase "every day is a separate offense" can be interpreted to allow repeated prosecutions of the same crime every time the date changes is barred by the Double Jeopardy prohibition on just that.

The Ex Post Facto clause ("Collins") guarantees no language in any United States ordinance or statute can permit criminal prosecution of an offense which was a civil offense when committed. The U.S. Constitution is the supreme law in Penn Hills Municipality.

Respondents Ex Post Facto prohibition ("Collins") violations are apparent, since civil enforcement in 2004 preceded 24 criminal prosecutions in 2005, 2006 and 2007 for offenses Respondents always claim are identical and DEP claims do not exist.

Judicial Respondents do not have immunity from this 42 U.S.C. 1983 action since declaratory relief is obviously not available elsewhere when Courts repeatedly violate Whitefords' civil rights, ignore Constitutional law and U.S. Supreme Court precedents, torture judicial doctrines to cancel Constitutional guarantees and prohibitions, frustrate Act 223, violate the Pa. Rules of Criminal Procedure and local ordinances in blind support of plainly perjured accusations. (See 42 U.S.C. 1983). Judicial Respondents have denied Whitefords' Due Process

guarantee and the Double Jeopardy and Ex Post Facto prohibitions 26 times, displaying an addiction to conviction disqualifying for any judge (See Ex Parte Young).

Municipal Respondents and their attorneys have no immunity from 1983 suit to violate Petitioners' fundamental civil rights (Monell v. Dept. of Social Services of New York; 436 U.S. 438) under the guise of prosecuting non-existent crime. Penn Hills has no immunity to share or confer on Respondent attorneys who disgrace their profession by suborning Davidson's perjury and commit some perjury of their own (After entering into evidence the DEP well site earth disturbance inspections done 03-18-2004 and 07-26-2004 in AR-6207-2004 and 2066-CL-2004 Respondent Meyer, Darragh et al claimed DEP does not perform them).

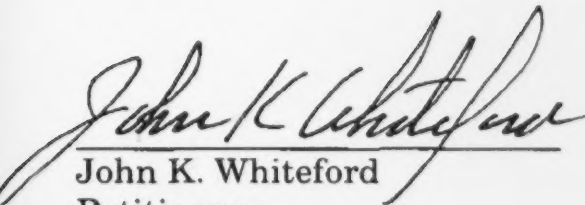
There are certainly penalties for perjury, but what to do with judges who convict 27 times of well site mud polluting a stream after DEP inspectors testify that is not true? Respondents promise to continue prosecuting since convictions are easy in Pennsylvania courts. Whitefords were not found innocent of any Davidson accusation.

#### RELIEF ASKED:

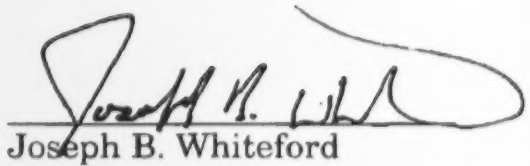
1. The U.S. Supreme Court is asked to void every Petitioner criminal conviction: in Penn Hills v. John K. or Joseph B. Whiteford cases cited, including fines or sanctions imposed on Whitefords in those cases, which violate Whitefords guaranteed, fundamental U.S. Constitutional civil rights and;
2. Order Respondent Hromyak to stop threatening Petitioners' constitutionally protected liberty and

- property interests;
3. Remand 07-272 for calculation of constitutional damages by jury trial;
  4. Reverse the trend. Do a Just thing

Sincerely



John K. Whiteford  
Petitioners  
1188 Hamil Road  
Verona, PA. 15147  
412-798-5606



Joseph B. Whiteford



APENDIX-ORDER #1

IN THE COMMONWEALTH COURT OF  
PENNSYLVANIA

Commonwealth of Pnnsylvania

v.

Joseph B. Whiteford  
Appellant

No. 995-CD-2005

**ORDER**

AND NOW, this 23<sup>rd</sup> Day of September, 2005, the  
order of the Court of Common Pleas of Allegheny County,  
dated May 11, 2005 is affirmed.

\_\_\_\_\_/s  
DAN PELLIGRINI, JUDGE

APPENDIX-ORDER #2

**UNITED STATES BANKRUPTCY COURT**

Western District of Pennsylvania

Case No. **05-36707-BM**

Chapter 7

In re: Debtor name used in the last eight years.

John K. Whiteford

1188 Hamil Road

Verona, Pa. 15147

Social Security No.

xxx-xx-6351

Employers Tax ID Np.

**DISCHARGE OF DEBTOR**

It appearing that the debtor is entitled to a discharge,

**IT IS ORDERED:**

The debtor is granted a discharge under section 727 of title 11, United States Code (the Bankruptcy Code).

BY THE COURT

Dated: 04/20/06

BERNARD MARKOWITZ

United States Bankruptcy Judge

APPENDIX-ORDER #3

IN THE COURT OF COMMON PLEAS OF ALLEGHENY  
COUNTY, PENNSYLVANIA

Municipality of Penn Hills and	*	CIVIL DIVISION
Howard Davidson	*	
	*	No. AR-6207-2004
Laintiffs	*	
vs.	*	
	*	
John K. Whiteford	(	
	*	
Defendant	*	

ORDER AND VERDICT

AND NOW, this 26<sup>th</sup> day of April, 2006, whereas the defendant appealed the decision of an arbitration panel of the Court of Common Pleas of Allegheny County imposing a fine on the defendant for violations of Penn Hills Local Ordinance 2136 and whereas by Order of the Court this case was scheduled for a non-jury trial on April 26, 2006 and such having been conducted, the Court hereby rules as follows:

The Cour hereby rules in favor of the Municipality of Penn Hills and against the defendant in the amountof ten thousand (\$10,000) for violations of Ordinance 2136.

BY THE COURT

\_\_\_\_\_/S  
R. GALLO, JUDGE

APENDIX-ORDER #4

IN THE COMMONWEALTH COURT OF PENNSYLVANIA

Joseph B. Whiteford  
Appellant

v

Municipality of Penn Hills and  
Howard Davidson

\*  
\*  
\*  
\*  
\*  
\*  
\*

No. 1931-CD-2006

**ORDER**

AND NOW, this 14th day of March, 2007 the order of the Court of Common Pleas of Allegheny County in the above captioned case is affirmed and the matter is remanded to the trial court to calculate the award of attorney fees.

Jurisdiction relinquished.

\_\_\_\_\_/s  
JAMES GARDNER COLINS.  
President Judge

APENDIX-ORDER #5

**UNITED STATES COURT OF APPEALS FOR THE  
THIRD CIRCUIT**

C.A. No. **07-3284 & 07-3300 (Consolidated)**

John K. Whiteford and  
Joseph B. Whiteford

Vs.

Penn Hills Municipality, et al.

(W.D. Pa. Civ. No. 07-cv-00272)

Presetn: MCDEE, TENDELL AND SMITH,  
**CIRCUIT JUDGES**

**ORDER**

Appellees motions for summary action in C.A. No. 07-3284 are denied and this case shall proceed to briefing. To the extent the Appellees motions seek damages under Fed.R. Ap. P. 38, the motions are regerred to a merits panel. The issue of jurisdiction in C.A. No. 07-3399 will be referred to the same merits panel. Appellants'/Cross Appellees' motion for a temporary restraining order I denied. Appellants/Cross Appellees shall advise the court in writing within seven (7) days of this order if they will rely on the brief they previously filed in C.A. 07-3284 or if they weillbe filing a new brief.

By the court

/s/ Theodore A. McKee  
Circuit Judge

APPENDIX-ORDER #6

**IN THE SUPREME COURT OF  
PENNSYLVANIA WESTERN DISTRICT**

JOSEPH B. WHITEFORD

Petitioner

v.

Municipality of Penn Hills  
and Howard Davidson

Respondents \*

\* No. 3-WM-2008

\*

\*

\* Petition for a Writ

\* of Prohibition

\*

\*

\*

\*

**ORDER**

PER CURIAM

AND NOW, this 18<sup>th</sup> day of January, 2008 the  
application for leave to file Original Process is granted.  
Petition for Writ of Prohibition is denied.

(unsigned)

True copy Patricia Nicola  
As of January 18, 2008  
Attest /s/ patricia Nicola  
Supreme Court of Pennsylvania

APPENDIX-ORDER #7

**IN THE SUPREME COURT OF  
PENNSYLVANIA WESTERN DISTRICT**

JOHN K. WHITEFORD

Petitioner

v.

Municipality of Penn Hills  
and Howard Davidson

Respondents

\* No. 4-WM-2008  
\*  
\*  
\* Petition for a Writ  
\* of Prohibition  
\*  
\*  
\*  
\*  
\*

**ORDER**

PER CURIAM

AND NOW, this 18<sup>th</sup> day of January, 2008 the  
application for leave to file Original Process is granted.  
Petition for Writ of Prohibition is denied.

(unsigned)

True copy Patricia Nicola  
As of January 18, 2008  
Attest /s/ patricia Nicola  
Supreme Court of Pennsylvania

APPENDIX-ORDER #8

IN THE COURT OF COMMON PLEAS OR ALLEGHENY  
COUNTY PENNSYLVANIA

Commonwealth of Pennsylvania	*	Criminal Division
	*	
v.	*	SA-2927-07
	*	
John Whiteford	*	(NT 246, 247, 248, 249
	*	156, 157, 158, 159, 160
	*	161-2007)

**Order of the Court**

AND NOW, this 15<sup>th</sup> day of February, 008,  
Defendant John Whiteford is adjudged guilty as to each  
charge and is entenced to a fine of Five thousand Dollars  
(\$6,000), plus costs.

Said fine and coosts shall be paid within sixty days of  
the date of entry of this Order.

NT-264-07, referenced in Defendant's exhibits and  
argument, had been withdrawn, and is not part of this  
summary judgment.

By the Court

\_\_\_\_\_-/s  
M. McCathy



APPENDIX0ORDER #9

IN THE COURT OF COMMON PLEAS OR ALLEGHENY  
COUNTY PENNSYLVANIA

Commonwealth of Pennsylvania \* Criminal Division

v.

SA-2927-07

Joseph B. Whiteford

\* (NT 149, 150, 151, 152

\* 153, 154, 245, 250, 252

\* 253 251- 2007

\*

**Order of the Court**

AND NOW, this 15<sup>th</sup> day of February, 008,  
Defendant John Whiteford is adjudged guilty as to each  
charge and is entenced to a fine of Six thousand Dollars  
(\$6,000), plus costs.

Said fine and coosts shall be paid within sixty days of  
the date of entry of this Order.

NT-264-07, referenced in Defendant's exhibits and  
argument, had been withdrawn, and is not part of this  
summary judgment.

By the Court

\_\_\_\_\_-/s  
M. McCarthy

APENDIX- ORDER #10

IN THE COMMONWEALTH COURT OF  
PENNSYLVANIA

Commonwealth of Pennsylvania \* No. 489-CD-2008

v. \*

Joseph B. whiteford \*

Appellant \*

\*

Xommonwealth of Pennsylvania \* No. 490-CD-02008

v. \*

John K. whiteford \*

Appellant \*

**PER CURIAM**

**ORDER**

AND NOW, this 5rh day of December, 2008, the Orders of the Court of Common Pleas of Allegheny County in the above captioned case, dated February 15, 2008 are AFFIRMED and this case is remanded to the Court of Common Pleas of Allegheny County to calculate the award of attorney's fees.

Jurisdiction relinquished.

(Unsigned Order)

APPENDIX-ORDER #11

IN THE COMMONWEALTH COURT OF  
PENNSYLVANIA

Commonwealth of Pennsylvania \* No. 489-CD-2008

v. \*

Joseph B. whiteford \*

Appellant \*

\*

Xommonwealth of Pennsylvania \*

No. 490-CD-02008

v. \*

John K. whiteford \*

Appellant \*

\*

**PER CURIAM**

**ORDER**

NOW, January 20, 2009, having considered appellants' petition for reconsideration before the court en banc and the answers filed by appellees Howard Davidson and Penn Hills Municipality, the application is denied.

(Unsigned Order)

CERTIFICATE OF SERVICE

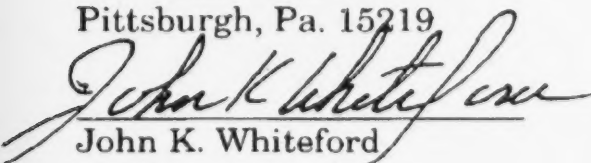
I, John K. Whiteford, certify that a copy of this WRIT OF PROHIBITION to the U.S. Supreme Court was first class mailed, postage paid, to the persons listed below on 03-04-2009:

Attorney Patricia McGrail Law offices of P McGrail L.L.C. 1714 Lincoln Way White Oak, Pa. 15131	Pa. Supreme Court, Prothonotary City county Bldg. Eighth floor Pgh. Pa. 15219
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Third Circuit Court of Appeals  
Office of the Clerk  
21400 US Courthouse, Room 3110  
601 Market street  
Philadelphia, Pa. 19106-1790

Patrick L. Mechas, Esq. Burns, White and Hickton Four Northshore Center 106 Isabella Street Pittsburgh, Pa. 15212	Mary E. Butler, Esq 1515 Market Wtreet Suite 1414 Phil., Pa. 19102
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Dennis J. Roman, Esq.l  
Marshall, Dennehy, Warner, Coleman & Goggins  
2900 U.S. Steel Tower  
600 Grant Street  
Pittsburgh, Pa. 15219

  
John K. Whiteford  
Petitioner